

CHAPTER 9 DISCIPLINE

[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 10]

657—9.1(272C) Authority and grounds for discipline.

9.1(1) The board has the authority to impose discipline for any violations of Iowa Code chapters 147, 155A, 124, 124A, 124B, 126, 205, and 272C or the rules promulgated thereunder.

9.1(2) The board has the authority to impose the following disciplinary sanctions:

- a.* Revocation of a registration or of a license to operate a pharmacy or to practice pharmacy.
- b.* Suspension of a registration or of a license to operate a pharmacy or to practice pharmacy until further order of the board or for a specified period.
- c.* Nonrenewal of a registration or of a license to operate a pharmacy or to practice pharmacy.
- d.* Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.
- e.* Probation.
- f.* Require additional education or training.
- g.* Require a reexamination.
- h.* Order a physical or mental examination.
- i.* Impose civil penalties not to exceed \$25,000.
- j.* Issue citation and warning.
- k.* Such other sanctions allowed by law as may be appropriate.
- l.* Suspend for a specified period of time the licensee's privilege to participate in the medical assistance program operated by the state.
- m.* Deny, suspend, or revoke a wholesale drug license.
- n.* Refuse, suspend, or revoke a precursor substance permit.

9.1(3) The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

- a.* The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
- b.* The facts of the particular violation.
- c.* Any extenuating circumstances or other countervailing considerations.
- d.* Number of prior violations or complaints.
- e.* Seriousness of prior violations or complaints.
- f.* Whether remedial action has been taken.
- g.* Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee or registrant.

9.1(4) The board may impose any of the disciplinary sanctions set out in subrule 9.1(2), including civil penalties in an amount not to exceed \$25,000, when the board determines that the licensee or registrant is guilty of the following acts or offenses:

- a.* Fraud in procuring a license. Fraud in procuring a license includes but is not limited to an intentional perversion of the truth in making application for a license to practice pharmacy or to operate a pharmacy in this state, and includes false representations of a material fact, whether by word or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged diploma, certificate or affidavit or identification or qualification in making an application for a license in this state.

b. Professional incompetency. Professional incompetency includes but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the pharmacist's practice.

(2) A substantial deviation by a pharmacist from the standards of learning or skill ordinarily possessed and applied by other pharmacists in the state of Iowa acting in the same or similar circumstances.

(3) A failure by a pharmacist to exercise in a substantial respect that degree of care which is ordinarily exercised by the average pharmacist in the state of Iowa acting under the same or similar circumstances.

(4) A willful or repeated departure from, or the failure to conform to, the minimal standard or acceptable and prevailing practice of pharmacy in the state of Iowa.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of pharmacy or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs. Habitual intoxication or addiction to the use of drugs includes, but is not limited to:

(1) The inability of a pharmacist to practice pharmacy with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

(2) The excessive use of drugs which may impair a pharmacist's ability to practice pharmacy with reasonable skill or safety.

e. Conviction of a felony. A copy of the record of conviction or a plea of guilty shall be conclusive evidence.

f. Fraud in representations as to skill or ability. Fraud in representations as to skill or ability include, but is not limited to, a pharmacist having made deceptive or untrue representations as to competency to perform professional services which the pharmacist is not qualified to perform by virtue of training or experience.

g. Use of untrue or improbable statements in advertisements.

h. Distribution of intoxicating liquors or drugs for other than lawful purposes. The distribution of drugs for other than lawful purposes includes but is not limited to the disposition of drugs in violation of Iowa Code chapters 155A, 124, and 126.

i. Willful or repeated violations of the provisions of Iowa Code chapter 147. Willful or repeated violations of this Act include but are not limited to a pharmacist intentionally or repeatedly violating a lawful rule or regulations promulgated by the board of pharmacy examiners or the state department of health or violating a lawful order of the board in a disciplinary hearing or violating the provisions of Title VII (Public Health) or Title VIII (Practice Acts), Code of Iowa, as amended.

j. Violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of pharmacy.

k. Failure to report a license revocation, suspension or other disciplinary action taken by another state, territory or country.

l. Knowingly aiding, assisting, procuring or advising another person to unlawfully practice pharmacy.

m. Inability to practice pharmacy with reasonable skill and safety by reason of mental or physical impairment or chemical abuse.

n. Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

- o.* Submission of a false report of continuing education or failure to submit the annual reports of continuing education.
- p.* Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice court claim or action.
- q.* Failure to file the reports required by subrule 9.2(4) concerning acts or omissions committed by another licensee.
- r.* Willful or repeated malpractice.
- s.* Willful or gross negligence.
- t.* Obtaining any fee by fraud or misrepresentation.
- u.* Violating any of the grounds for revocation or suspension of a license listed in Iowa Code sections 147.55, 155A.12 and 155A.15.
- v.* Practicing pharmacy without an active and current license.
- w.* Attempting to circumvent the patient counseling requirements, or discouraging patients from receiving patient counseling concerning their prescription drug orders.
- x.* Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to 1995 Iowa Acts, chapter 115.

657—9.2(272C) Investigations.

9.2(1) *General.* The board shall, upon receipt of a written or verbal complaint, or may upon its own motion pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules for licensee discipline.

9.2(2) *Reporting of judgments or settlements.* Each licensee shall report to the board every adverse judgment in a malpractice action to which the pharmacist is a party, and every settlement of a claim alleging malpractice. The report together with a copy of the judgment or settlement must be filed within 30 days from the date of the judgment or settlement.

9.2(3) *Investigation of reports of judgments and settlements.* Reports received by the board from the commissioner of insurance, insurance carriers and licensees involving adverse judgments in a professional malpractice action, and settlement of claims alleging malpractice, which involve acts or omissions which constitute negligence, careless acts or omissions in the practice of pharmacy, shall be reviewed and investigated by the board.

9.2(4) *Reporting of acts or omissions.* Each licensee, having firsthand knowledge of acts or omissions set forth in subrule 9.1(4), shall report to the board those acts or omissions when committed by another person licensed to practice pharmacy. The report shall include the name and address of the licensee and the date, time and place of the incident.

9.2(5) *Failure to report.* Upon obtaining information that a licensee failed to file a report as required by subrule 9.2(4) within 30 days from the date the licensee initially acquired the information, the board may initiate a disciplinary proceeding against the licensee who failed to make the required report.

9.2(6) *Confidentiality of investigative files.* Complaint files, investigation files, and all other investigation reports and other investigative information in the possession of the board or its employees or agents which relate to licensee, permittee, or registrant discipline shall be privileged and confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee, permittee, registrant, and the board, its employees and agents involved in licensee, permittee, or registrant discipline, nor be admissible evidence in any judicial or administrative proceeding other than the proceeding involving licensee, permittee, or registrant discipline. The licensee, permittee, or registrant is not entitled to investigative reports and documentary information until a disciplinary proceeding has been commenced. However, a final written decision and finding of fact of the board in a disciplinary proceeding shall be public record.

9.2(7) *Investigation of allegations.* In order to determine if probable cause exists for a disciplinary hearing, the board, the executive secretary/director, or someone designated by the executive secretary/director, shall cause an investigation to be made into the allegations of the complaint. In this regard, the person complained of may be furnished with information concerning the complaint and given the opportunity to informally present a position or defense respecting the allegations of the complaint prior to the commencement of a contested case. This position or defense may be submitted in writing but a personal conference with the investigator(s) may be had as a matter of right upon request.

9.2(8) *Investigatory subpoena powers.* In connection with the reporting of acts and omissions as required in 9.2(4), the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (hearing).

9.2(9) *Investigative report.* Upon completion of the investigation, the investigator(s) shall prepare a report for the screening committee's consideration, which report may contain the position or defense of the respondent, discuss jurisdiction, and set forth any legal arguments and authorities that appear applicable to the case. The report may be concluded with a recommendation as to whether probable cause exists for further proceedings.

9.2(10) *Screening committee.* A screening committee consisting of the board chairperson and vice chairperson, or any two board members designated by the chairperson, including at least one licensed pharmacist, shall review and rule on all investigative reports. Participation on the screening committee does not bar any board member from participating in any subsequent disciplinary proceeding.

9.2(11) *Ruling on the initial inquiry.*

a. Rejection. If a determination is made by the screening committee to reject the case, the complaint may be returned to the complainant along with a statement specifying the reason for rejection. A letter of explanation concerning the decision of the board may be sent to the subject of the investigation.

b. Requirement of further inquiry. If determination is made by the screening committee to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

c. Acceptance of the case. If a determination is made by the screening committee to initiate formal disciplinary action, the committee shall direct the executive secretary/director to prepare a complaint and statement of charges and notice of hearing.

657—9.3(272C) Peer review committees.

9.3(1) The board may establish and register peer review committees in an emergency or under special circumstances.

9.3(2) The board shall determine which complaints or other matters shall be referred to a peer review committee for investigation, review, and report to the board.

9.3(3) The board may provide investigatory and related services to a peer review committee upon request.

9.3(4) A peer review committee may determine the method to be used in making its investigation, or that it is unable to investigate the report upon a complaint and return the complaint, together with an explanation, to the board.

9.3(5) A peer review committee shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

9.3(6) Members of a peer review committee shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

9.3(7) A peer review committee shall submit to the board for approval the procedures to be used for review, investigation, and handling of all complaints.

657—9.4(17A,124,124B,126,147,155A,272C) Disciplinary proceedings. The proceeding for revocation or suspension of a pharmacy license, a wholesale drug license, a pharmacy technician registration, a pharmacist-intern registration, or a license to practice pharmacy, or to discipline a person licensed to practice pharmacy, or the denial of a license or registration, or the suspension or revocation of a permit to handle precursor substances, or the refusal to issue or renew a permit to handle precursor substances, shall be substantially in accord with the following procedures which are an addition to the procedures stated in Iowa Code sections 147.58 et seq., and 155A.16.

657—9.5(17A,124B,147,155A,272C) Notice of disciplinary hearing.

9.5(1) The executive secretary/director shall prepare the notice of the hearing.

9.5(2) The notice of hearing shall be prepared by the executive secretary/director upon notice to do so by members of the screening committee upon a probable cause determination.

9.5(3) The notice of hearing shall include:

- a. A statement of the time, place, and nature of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- c. A reference to the particular sections of the statutes and rules involved.
- d. A short and plain statement of the matters involved.

9.5(4) Delivery of the notice shall be by personal service or by certified mail, return receipt requested.

9.5(5) Notice of a hearing involving denial of license, permit, or registration renewal shall be served no later than 30 days before the expiration of the license, permit, or registration.

9.5(6) Notice of a hearing involving revocation or suspension of a license, permit, or registration shall be served no less than 30 days before the time set for the hearing.

9.5(7) In computing any period of time allowed by applicable statutes, the day of the hearing shall not be included. The last day of the period shall be included unless it is a Sunday or legal holiday in which event the period runs until the end of the previous day which is not a Sunday or legal holiday. Saturdays, Sundays, and legal holidays shall be included in computing the period.

9.5(8) The board, without notice of a hearing, may suspend any license or registration simultaneously with the institution of proceedings under the applicable statute if it finds there is imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings as outlined in Iowa Code chapter 17A.

657—9.6(17A,124B,147,155A,272C) Hearing procedure.

9.6(1) A hearing shall be conducted by a qualified administrative law judge and a quorum of the board or a panel of not less than three pharmacist members. The administrative law judge's duties shall include:

- a. Opening the record and receiving appearances.
- b. Administering oaths.
- c. Entering notice of the hearing into the record.
- d. Receiving testimony and exhibits presented by the parties.

- e.* At the administrative law judge's discretion, interrogating witnesses.
- f.* Ruling on objections and motions.
- g.* Closing the hearing.
- h.* Participating in board or panel deliberations and preparing an order containing findings of fact and conclusions of law in accordance with the board's or panel's decisions.

9.6(2) The licensee, permittee, or registrant may be represented by counsel at that party's own expense.

9.6(3) The board or panel may interrogate witnesses.

9.6(4) The testimony shall be taken under oath or affirmation.

9.6(5) The administrative law judge shall prepare in writing the proposed decision of the panel or the final decision of the board, as applicable. Such decisions shall:

- a.* Be in writing and signed by the board chairperson or the chairperson's designee.
- b.* Set forth the issues, a brief history of the case, findings of fact, the reasons for the decision, and the actual decision.
- c.* Be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs.
- d.* Be delivered to the licensee, permittee, or registrant by personal service or by certified mail, return receipt requested.

9.6(6) License, permit, or registration disciplinary hearings shall be open to the public except as provided in Iowa Code section 272C.6 and Iowa Code chapter 21.

9.6(7) Copies of all decisions of the pharmacy board shall be kept on file for public inspection at the office of the board as per conditions set out in 657—Chapter 14.

9.6(8) Oral proceedings in connection with a hearing in a contested case shall be recorded either by mechanized means or by certified shorthand reporters. These records shall be kept in the board office for a period of five years following the date of the hearing.

9.6(9) The chairperson of the board shall have the right to vote in all administrative hearings.

9.6(10) Final decision. When a quorum of the board presides over the reception of the evidence at the hearing, its decision is a final decision.

If the hearing is conducted by a panel as specified in subrule 9.6(1), the decision is a proposed decision and subject to the review provisions of 9.6(11).

9.6(11) Proposed decision—appeal to board—procedures and requirements. A proposed decision as defined in subrule 9.6(10) becomes a final decision unless appealed in accordance with the following procedure:

a. A proposed decision may be appealed to the board or a quorum thereof by a party to the decision who is adversely affected thereby. An appeal is commenced by serving on the executive secretary/director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellee.

b. The board may review a proposed decision or order on its own motion by serving notice on all parties within 30 days of a proposed decision or order.

c. Within 7 days after service of the notice of appeal, the appellant shall serve ten copies of the exceptions, if any, together with the brief and argument on the executive secretary/director. The appellant shall also furnish copies to each appellee by first-class mail. Any appellee to the appeal shall have 14 days following service or exceptions and brief on the executive secretary/director to file a responsive brief and argument. Except for the notice of appeal, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by a member of the board or the executive secretary/director.

d. Oral argument of the appeal is discretionary but may be required by the board upon its own motion. At the times designated for filing briefs and arguments, either party may request oral argument. If a request for oral argument is granted or such is required by the board on its own motion, the executive secretary/director shall notify all parties of the date, time, and place. The board chairperson or a designated board member shall preside at the oral argument and determine the procedural order of the proceedings.

e. The record on appeal shall be the entire record made before the hearing panel.

657—9.7(272C) Continuances. A party has no automatic right to a continuance or delay of the board's hearing procedure or schedule. However, a party may request a continuance of the executive secretary/director no later than seven days prior to the date set for hearing. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating, or emergency circumstances. The executive secretary/director shall have power to grant continuances after consultation, if needed, with the chairperson of the board. A board member shall not be contacted in person, by mail, or by telephone by a party seeking a continuance.

657—9.8(17A,124B,147,155A,272C) Informal settlement.

9.8(1) Parties.

a. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the board or the respondent.

b. The board chairperson shall designate the executive secretary/director or one or more board members with authority to negotiate on behalf of the board.

9.8(2) Waiver of notice and opportunity to be heard. Upon initiation of negotiation, the assistant attorney general is authorized to discuss informal settlement with the board's designee. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation.

9.8(3) Board approval. All informal settlements are subject to approval of a majority of the full board. If the board fails to approve an informal settlement, it shall be of no force or effect to either party.

9.8(4) Participation of designee. A board member who is designated to act in negotiation of an informal settlement may review investigative material in the course of conducting the negotiation. The designated board member is not disqualified from participating in the adjudication of the contested case by virtue of reviewing the investigative material or having participated in negotiation discussions.

657—9.9(272C) Prehearing conferences. The administrative law judge, either on the administrative law judge's own motion or at the request of the executive secretary/director, the assistant attorney general representing the public interest, or the respondent, may hold a prehearing conference.

657—9.10(272C) Appearance. The licensee shall have the right to appear before the board in person or by attorney at the licensee's expense.

657—9.11(272C) Subpoena powers. After service of the notice of hearing pursuant to rule 9.5(17A,147,155A,124B,272C), the following procedures are available to the parties in order to obtain relevant and material evidence:

1. Board subpoenas for books, papers, records, and other real evidence will be issued to a party upon request. Application should be made to the executive secretary/director specifying the evidence sought. Subpoenas for witnesses may also be obtained. The executive secretary/director shall issue all subpoenas for both parties upon request.

2. Discovery procedures applicable to civil actions are available to the parties in the proceeding under these rules.

3. Evidence obtained by subpoena or through discovery shall be admissible at the hearing if it is otherwise admissible under rule 9.15(17A,272C) or by statute.

4. The evidence outlined in Iowa Code section 17A.13(2), where applicable and relevant, shall be available to a party upon request.

5. The presiding officer may also administer oaths and affirmations, take or order that depositions be taken, and grant immunity to a witness from disciplinary proceedings initiated either by the board or by other state agencies which might otherwise result from the testimony to be given by the witness to the panel.

657—9.12(272C) Refusal to obey subpoena. In the event of a refusal to obey a subpoena, the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena; and if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

657—9.13(272C) Failure by respondent to appear. If a respondent, upon whom a proper notice of hearing has been served, fails to appear either in person or by counsel at the hearing, the board may proceed with the conduct of the hearing and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

657—9.14(17A,124B,147,155A,272C) Order of proceedings. Before testimony is presented, the record shall show the identity of any board members present, the presiding hearing officer, the primary parties and their representatives, and the fact that all testimony is being recorded.

Hearings before the board generally follow the order established by these rules.

1. The presiding officer shall read the specification of charges and the answer thereto, or other responsive pleading, filed by the respondent prior to the hearing.

2. The assistant attorney general representing the public interest before the board may make an opening statement.

3. The respondent or respondents shall each be offered the opportunity to make an opening statement. A respondent may elect to reserve an opening statement until just prior to the presentation of evidence by the respondent.

4. The presentation of evidence on behalf of the public.

5. The presentation of evidence on behalf of the respondent(s).

6. Rebuttal evidence on behalf of the public.

7. Rebuttal evidence on behalf of the respondent(s).

8. Closing arguments, first on behalf of the public, then on behalf of the respondent, and then on behalf of the public.

657—9.15(17A,272C) Rules of evidence—documentary evidence—official notice.

9.15(1) Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs and may be based upon such evidence even if it would be inadmissible in a jury trial.

9.15(2) Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

9.15(3) Subject to the above requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

9.15(4) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Accurate copies of the document offered at the hearing shall be furnished to those members of the board sitting at the hearing and to opposing parties.

9.15(5) Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

9.15(6) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the board. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions, or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decisions are announced unless the board determines as part of the record or decisions that fairness to the parties does not require an opportunity to contest such facts.

657—9.16(272C) Confidentiality. At no time prior to the release of the final decision by the board shall any portion or the whole thereof be made public or be distributed to any persons other than the parties.

657—9.17(17A,272C) Notification of decision. All parties to a proceeding hereunder shall be promptly furnished with a copy of any final decision or order either in person or by first-class mail, or by telephone if necessary to ensure that the parties learn of the decision or order first.

657—9.18(17A,272C) Application for rehearing. Any party may file an application for rehearing, stating the specific grounds therefor and the relief sought, within 20 days after the issuance of any final decision by the board or administrative law judge in a contested case. A copy of such application shall be timely mailed by the applicant to the board office. Such an application for rehearing shall be deemed to have been denied unless the board grants the application within 20 days after its filing, or 20 days after the first official board meeting occurring after the date of the application, whichever occurs later.

657—9.19(17A,124B,147,155A,272C) Judicial review and appeal. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act (Iowa Code chapter 17A), from the date of the board's decision.

657—9.20(272C) Board decision. The board's decision and order to discipline a licensee or permittee or to revoke or suspend a license to practice pharmacy, a wholesale drug license, or a license to operate a pharmacy, or to suspend or revoke a permit to handle precursor substances shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

657—9.21(17A,272C) Rules of general applicability. Ex parte communications, separation of function, judicial review, and appeals shall be in accordance with the terms of the Iowa administrative procedure Act (Iowa Code chapter 17A).

657—9.22(17A,272C) Publication of decisions. Final decisions of the board relating to disciplinary procedures shall be transmitted to the appropriate professional association and a newspaper of general circulation to be selected by the board.

657—9.23(17A,124B,147,155A,272C) Reinstatement. Any person whose license to practice pharmacy or to operate a pharmacy or whose wholesale drug license or permit to handle precursor substances or whose pharmacy technician registration or pharmacist-intern registration has been revoked or suspended must meet the following eligibility requirements:

1. Must have satisfied all the terms of the order of revocation or suspension or court proceedings as they apply to that revocation or suspension. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the license, registration, or permit was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the board's order or the date of voluntary surrender.

2. A person whose license to practice pharmacy was revoked must successfully pass NAPLEX or an equivalent examination as determined by NABP, the Federal Drug Law Examination (FDLE), and the Iowa Drug Law Examination.

3. All proceedings for reinstatement shall be initiated by the respondent who shall file with the board an application for reinstatement of the license, registration, or permit. Such application shall be docketed in the original case in which the license, registration, or permit was revoked, suspended, or relinquished. All proceedings upon petition for reinstatement, including all matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. The board and the respondent may informally settle the issue of reinstatement. The respondent may choose to have an informal reinstatement conference before the board, as provided in rule 9.24(17A,124B,147,155A,272C).

4. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license, registration, or permit to be reinstated. The burden of proof to establish such facts shall be on the respondent.

5. An order for reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law and must be based upon the affirmative vote of a quorum of the board. This order shall be available to the public as provided in 657—Chapter 14.

657—9.24(17A,124B,147,155A,272C) Informal reinstatement conference.

9.24(1) Request. Upon informed and written consent by the respondent, an informal reinstatement conference before the board may be held.

9.24(2) Confidentiality. The conference shall be open to the public except as provided in Iowa Code chapter 21 and Iowa Code section 272C.6. Material submitted to the board regarding a licensee or permittee subject to suspension or revocation received prior to the filing of an application for reinstatement shall be deemed to be investigatory in nature and therefore confidential. After an application for reinstatement is filed by the respondent, no material regarding the respondent shall be presented to board members until either a formal hearing is held or a request for an informal settlement conference is made and approved. After a request for an informal settlement conference is made and approved, all material submitted by the respondent to the board for its consideration shall be deemed public records and is not confidential unless the respondent requests that the conference be closed. Upon filing a request for an informal reinstatement conference, the respondent consents to the provision of relevant materials to board members prior to the time of the informal reinstatement conference.

9.24(3) Disposition. After conducting an informal reinstatement conference, the board may issue a proposed order for reinstatement, may issue a proposed order denying reinstatement, or may order a formal hearing on the application.

9.24(4) Appeal—formal hearing. Upon appeal of a proposed order or upon the board's order for formal hearing, application for reinstatement shall be set for formal hearing subject to the same rules of procedure as other cases before the board. By consenting to the informal settlement conference, respondent waives any objection to any board member participating in a formal hearing by virtue of the board member's participation at the informal settlement conference. All materials submitted and statements made by the respondent at the informal settlement conference shall be admissible at a subsequent formal hearing.

657—9.25(17A,124B,147,155A,272C) Voluntary surrender of a license, permit, or registration.

A license to practice pharmacy, a license to operate a pharmacy, a wholesale drug license, a permit to handle precursor substances, a pharmacy technician registration, or a pharmacist-intern registration which has been voluntarily surrendered shall be considered a revocation of license, permit, or registration with respect to a request for reinstatement which will be handled under the terms established by rule 657—9.23(17A,124B,147,155A,272C).

657—9.26(17A,124B,147,155A,272C) License, permit, or registration denial. Any request to have a hearing before the board concerning the denial of a license, permit, or registration shall be submitted by the applicant in writing to the board by certified mail, return receipt requested, within 30 days of a mailing of a notice of denial of license, permit or registration.

657—9.27(272C) Disciplinary hearings—fees and costs.

9.27(1) Definitions. As used in this chapter in relation to a formal disciplinary action filed by the board against a licensee:

“Deposition” means the testimony of a person pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“Expenses” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“Medical examination fees” means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a licensee when the examination or evaluation is conducted pursuant to an order of the board.

“Transcript” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“Witness fees” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa, for purposes of providing testimony on the part of the state of Iowa. For the purposes of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72 as the case may be.

9.27(2) The board may charge a fee not to exceed \$75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the board. In addition to the fee, the board may recover from the licensee costs for the following procedures and personnel:

- a. Transcript.
- b. Witness fees and expenses.
- c. Depositions.
- d. Medical examination fees incurred relating to a person licensed under Iowa Code chapter 147, 155, or 169.

9.27(3) Fees and costs assessed by the board pursuant to subrule 9.27(2) shall be calculated by the board's executive secretary/director and shall be entered as part of the board's final disciplinary order. The board's final disciplinary order shall specify the time period in which the fees and costs shall be paid by the licensee.

9.27(4) Fees and costs collected by the board pursuant to subrule 9.27(2) shall be allocated pursuant to rule 641—173.20(272C). The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

9.27(5) Failure of a licensee to pay the fees and costs assessed herein in the time specified in the board's final disciplinary order shall constitute a violation of a lawful order of the board.

657—9.28 and 9.29 Reserved.

657—9.30(272C) Impaired pharmacist review committee. Pursuant to the authority of Iowa Code section 272C.3(1)“k,” the board establishes the impaired pharmacist review committee.

9.30(1) Definitions.

“*Impaired pharmacist program contract*” or “*contract*” means the written document establishing the terms for participation in the impaired pharmacist program prepared by the impaired pharmacist review committee.

“*Impairment*” means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addition, or any neuropsychological or physical disorder or disability.

“*IPP*” or “*program*” means the impaired pharmacist program.

“*IPRC*” or “*committee*” means the impaired pharmacist review committee.

“*Self-report*” means the licensee providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging the same from a second party.

9.30(2) Purpose. The impaired pharmacist review committee evaluates, assists, monitors and, as necessary, makes reports to the board on the recovery or rehabilitation of pharmacists who self-report impairments.

9.30(3) Composition of the committee. The chairperson of the board shall appoint the members of the IPRC. The membership of the IPRC includes, but is not limited to:

- a. Executive secretary/director of the board or the secretary/director's designee from the board's staff;
- b. One pharmacist who has remained free of addiction for a period of no less than two years since successfully completing a board-approved recovery program and board-ordered probation for drug or alcohol dependency, addiction, or abuse;
- c. One practitioner with expertise in substance abuse/addiction treatment programs;
- d. One physician with expertise in the diagnosis and treatment of neuropsychological disorders and disabilities; and
- e. One public member.

9.30(4) Eligibility. To be eligible for participation in the impaired pharmacist program, a licensee must self-report an impairment or suspected impairment directly to the office of the board. A licensee is deemed ineligible to participate in the program if the board or committee finds evidence of any of the following:

- a. The licensee engaged in the unlawful diversion or distribution of controlled substances or illegal substances;
- b. At the time of the self-report, the licensee is already under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;
- c. The licensee has caused harm or injury to a patient;
- d. There is currently a board investigation of the licensee that the committee determines concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;
- e. The licensee has been subject to a civil administrative or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or a foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of pharmacy; or
- f. The licensee failed to provide truthful information or to fully cooperate with the board or committee.

9.30(5) Type of program. The impaired pharmacist program is an individualized recovery or rehabilitation program designed to meet the specific needs of the impaired pharmacist. The committee shall meet with the licensee and, upon the recommendation of an IPRC-approved evaluator, shall determine the type of recovery or rehabilitation program required to treat the licensee's impairment. The committee shall prepare an impaired pharmacist program contract, to be signed by the licensee, that shall provide a detailed description of the goals of the program, the requirements for successful completion, and the licensee's obligations therein.

9.30(6) Terms of participation. A licensee shall agree to comply with the terms for participation in the IPP established in the contract. Terms of participation specified in the contract shall include, but are not limited to:

a. *Duration.* The length of time a licensee shall participate in the program shall be determined by the committee in accordance with the following:

(1) The length of participation in the program for licensees impaired as a result of chemical dependency or alcohol or substance abuse or addiction shall be at the discretion of the committee.

(2) The length of participation in the program for licensees with impairments resulting from neuropsychological or physical disorders or disabilities will vary depending upon the recommendations for treatment provided by a qualified evaluator designated by the committee to establish an appropriate treatment protocol.

b. *Noncompliance.* A licensee participating in the program is responsible for notifying the committee of any instance of noncompliance including, but not limited to, a relapse. Notification of noncompliance made to the IPRC by the licensee, any person responsible for providing or monitoring treatment, or another party shall result in the following:

(1) First instance. Upon receiving notification of a first instance of noncompliance including, but not limited to, a relapse, the IPRC shall make a report to the board that includes recommendations as to whether treatment should be augmented or formal charges should be filed.

(2) Second instance. Upon receiving notification of a second instance of noncompliance including, but not limited to, a relapse, the IPRC shall nullify the contract and refer the case to the board for the filing of formal charges or other appropriate action.

c. *Practice restrictions.* The IPRC may impose restrictions on the license to practice pharmacy as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restrict practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

9.30(7) Limitations. The IPRC establishes the terms and monitors a participant's compliance with the program specified in the contract. The IPRC is not responsible for participants who fail to comply with the terms of or to successfully complete the IPP. Participation in the program under the auspices of the IPRC shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of pharmacy by a participant shall be referred to the board for appropriate action.

9.30(8) Confidentiality. The IPRC is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the IPP under the auspices of the IPRC is not a matter of public record.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.23, 124.301, 124.304, 124B.12, 126.16 to 126.18, 155A.6, 155A.12, 155A.13, 155A.13A, 155A.15 to 155A.18, 155A.25, 205.11, 272C.3 to 272C.6, 272C.9, and 272C.10 and Iowa Code chapter 252J.

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